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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

THE PEOPLE,

Plaintiff and  
Respondent,

v.

MARK HENDERSON,

Defendant and  
Appellant.

B290510

(Los Angeles County  
Super. Ct. No. ZM007627)

APPEAL from judgment of the Superior Court of Los Angeles County. David Herriford, Judge. Dismissed.

Christian C. Buckley, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

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Defendant Mark Henderson appeals from a trial court order committing him to the custody of the Department of State Hospitals (DSH) under the Sexually Violent Predators Act (SVPA) (Welf. & Inst. Code, § 6600 et seq.) We appointed counsel to represent Henderson on appeal. Appointed counsel filed an opening brief invoking the independent judicial review procedures set forth in *Anders v. State of California* (1967) 386 U.S. 738 (*Anders*) and *People v. Wende* (1979) 25 Cal.3d 436 (*Wende*). For reasons discussed in *People v. Kisling* (2015) 239 Cal.App.4th 288 (*Kisling*), review denied November 10, 2015, S228550, we conclude that *Anders/Wende* review on appeal is not available to Henderson in the SVPA proceedings involved here, and dismiss the appeal.

## DISCUSSION

On June 22, 2004, the People filed a petition to commit Henderson as a sexually violent predator within the meaning of the SVPA. The trial court made a summary probable cause finding after reviewing the initial petition report and ordered Henderson transferred to the DSH pending litigation of the petition.<sup>1</sup>

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<sup>1</sup> The Superior Court has provided an affidavit indicating that pursuant to Government Code section 69955, subdivision (e), all reporter's notes for proceedings prior to October 2008 have been destroyed and are therefore unavailable.

Henderson's case was continued numerous times. On June 22, 2010, trial counsel filed a motion for a new contested probable cause hearing arguing that Henderson never waived his right to such a hearing and the prior hearing was not valid under *In re Ronje* (2009) 179 Cal.App.4th 509.

Proceedings were continued until June 2011, when a new probable cause hearing was held, and a finding of probable cause was made. The proceedings were again continued, until the petition was brought to trial in 2018.

Henderson waived his right to a jury trial and his right to be present at the proceedings. His bench trial was held on April 2, 2018. At trial, competing testimony was given regarding Henderson's mental disorders, and the likelihood that he would reoffend. On May 16, 2018, the court issued a 22-page written memorandum of decision concluding that Henderson qualified for commitment under the SVPA. Based on a stipulation between the parties under *People v. Castillo* (2010) 49 Cal.4th 145, the court imposed a two-year commitment.

Henderson timely appealed, and we appointed counsel to represent him. On December 13, 2018, appointed counsel filed an opening brief citing *Anders* and *Wende*. Although counsel recognized that the courts of appeal have concluded *Wende/Anders* procedures do not apply to SVP proceedings, he argued that given the "substantial penalty involved in SVP commitment and its relationship to a criminal conviction, *Wende/Anders* procedures should be mandatory

under the Sixth and Fourteenth Amendments of the United States Constitution.” We advised Henderson on December 13, 2018, of his right to file a brief or letter containing any issues he wishes this court to consider. No response has been received to date.

We recognize that *Kisling* involved an individual’s appeal from an order denying his petition to be released from a commitment under the SVPA, whereas Henderson’s current appeal is taken from an order committing him to the DHS’s custody. Nonetheless, we find the principles discussed in *Kisling* applicable. *Wende* review applies only to appointed counsel’s representation of an indigent criminal defendant in a first appeal of right, and, because proceedings under the SVPA are civil matters, it follows that an appeal from an SVPA proceeding does not directly implicate *Wende*. (*Kisling, supra*, 239 Cal.App.4th at p. 290.) Application of the three-part test articulated in *Conservatorship of Ben C.* (2007) 40 Cal.4th 529, upon which *Kisling* relies, does not cause us to find that such review is required on appeal from a SVPA proceeding. (*Kisling, supra*, 239 Cal.App.4th at pp. 290–292.) Appointed counsel filed an opening brief raising no issues on appeal, thus dismissal of the appeal is warranted. (*Id.* at pp. 291–292.)

## **DISPOSITION**

The appeal is dismissed.

MOOR, J.

WE CONCUR:

RUBIN, P. J.

BAKER, J.